

1 because you will be coming back to testify in  
2 some different capacity. Your counsel will  
3 explain all of that to you.

4 THE WITNESS: Okay.

5 JUDGE SIPPEL: So just doing talk  
6 your testimony with anybody except counsel  
7 until you're finished with this, okay?

8 THE WITNESS: Okay.

9 JUDGE SIPPEL: All right.

10 THE WITNESS: What's the schedule  
11 for tomorrow. Am I supposed to be here at the  
12 same time tomorrow?

13 MR. LYON: I would be there at  
14 6:30.

15 THE WITNESS: 6:30, okay.

16 JUDGE SIPPEL: 6:30 for you, 9:30  
17 for us. Isn't that fair?

18 THE WITNESS: Yes, it's fair.

19 MR. LYON: Are you we going to put  
20 Detective Shilling on now?

21 JUDGE SIPPEL: What time is it?

22 MR. LYON: Five after 4:00 p.m.

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1 MS. LANCASTER: It's after 4:00  
2 p.m.

3 JUDGE SIPPEL: Yes, I mean I have  
4 no problems getting him started but I doubt  
5 he's going to finish today is he?

6 MR. LYON: No way on that one.

7 MS. LANCASTER: No way he'll  
8 finish.

9 JUDGE SIPPEL: I didn't think so.  
10 Well why don't we get him started and see how  
11 we go.

12 MR. LYON: Mr. Titus, you have the  
13 right to continue to monitor this proceeding.

14 THE WITNESS: Okay, I'll do so.

15 MS. LANCASTER: Your Honor

16 JUDGE SIPPEL: But there should be  
17 nobody else in there with you unless it's the  
18 staff people.

19 THE WITNESS: There's nobody here  
20 at all, just me.

21 MS. LANCASTER: Your Honor --

22 THE WITNESS: You guys cameras

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1 zoomed way in by the way.

2 JUDGE SIPPEL: Is that good or bad?

3 THE WITNESS: Well I can't see you.

4 JUDGE SIPPEL: Well let's see -- do  
5 you see us better now?

6 THE WITNESS: There you go, that's  
7 better.

8 JUDGE SIPPEL: Okay, let's go off  
9 the record. Let's go off the record. The  
10 reporter -- we'll go off record for a minute.

11 (Whereupon, off the record from  
12 4:05 p.m. until 4:12 p.m.)

13 JUDGE SIPPEL: I'm going to ask the  
14 witness to identify himself please just for  
15 the record sir?

16 THE WITNESS: Detective Robert  
17 Shilling, S-H-I-L-L-I-N-G.

18 JUDGE SIPPEL: Which department is  
19 your police department?

20 THE WITNESS: I'm with the Seattle  
21 Police Department.

22 JUDGE SIPPEL: Okay, would you just

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1 stand and raise your right hand please.

2 WHEREUPON,

3 ROBERT SHILLING

4 was called for examination by Counsel for the  
5 Enforcement Bureau, having been first duly  
6 sworn, assumed the witness stand, was examined  
7 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. KNOWLES-KELLETT:

10 Q Detective Shilling, have you had a  
11 chance to look at what's been marked as  
12 Enforcement Bureau Exhibit 2, 3, 4, and 5?

13 A I have.

14 Q Okay, if called to provide direct  
15 oral testimony, Exhibit 2 is your written  
16 testimony. Do you believe that's still true  
17 and correct?

18 A Yes.

19 Q Okay, in light of a couple of  
20 questions arose yesterday at the admission  
21 session regarding a couple of the documents in  
22 Exhibit 4. If you would turn your attention

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1 to those.

2 Pages one and two are a notice of  
3 release. Did you prepare that document?

4 A I did not.

5 Q Okay, who prepared that document?

6 A That's done by the Department of  
7 Corrections Headquarters in our community  
8 protection unit.

9 Q Okay, on page 41 of that exhibit --  
10 page 41 I'll tell you is a duplicate of  
11 Exhibit 5 which I directed and turned your  
12 attention to a second ago.

13 I note at the top it says prepared  
14 by Detective Robert A. Shilling.

15 A That's correct.

16 Q Is that you?

17 A That is.

18 Q Okay, and you prepared this  
19 document?

20 A I did.

21 Q Okay, and this is your summary of  
22 the facts in your file?

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1           A     That's correct.

2           Q     Okay, detective in your written  
3 testimony you indicated that you evaluated Mr.  
4 Titus' risk of reassessment on several  
5 occasions. Is that correct?

6           A     That's correct.

7           Q     The first occasion was?

8           A     The first occasion was when he was  
9 first released from prison and at that point  
10 in time we had a committee that was set up to  
11 review risk.

12          Q     Okay.

13          A     It was all subjective. There was  
14 nothing objective about it other than the fact  
15 that we had dedicated employees that, you know  
16 were trying to work within the spirit of the  
17 law and look at all the information that we  
18 had available to determine some sort of risk  
19 to the community.

20          Q     I think since the time you wrote  
21 the written testimony I think you -- what was  
22 the problem with the subjective analysis for

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1 risk assessment?

2 JUDGE SIPPET: Can we put a time  
3 frame on that first?

4 BY MR. KNOWLES-KELLET:

5 Q That as in the early to mid-90's.

6 A That we did Mr. Titus' initial risk  
7 assessment?

8 Q Yes, why did you move away from  
9 subjective

10 JUDGE SIPPET: What date did you do  
11 the first risk assessment for him, for Mr.  
12 Titus that is?

13 THE WITNESS: I believe it was in  
14 January of 1994.

15 JUDGE SIPPET: January 1994 okay,  
16 and that time there was a subjective system  
17 for assessing. Is that --

18 THE WITNESS: Washington State law  
19 left it up to every single law enforcement  
20 agency in Washington State to determine risk.

21 There was no rhyme nor reason to  
22 how that was done. It was just mainly law

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1 enforcement agencies putting together a  
2 committee of people within their law  
3 enforcement agency, usually of different  
4 ranks, different knowledge to sit and look at  
5 all the information that we had received from  
6 the Department of Corrections, institutional  
7 history, psychological history, treatment  
8 history. And determine based on all that  
9 information that we read what the possible  
10 risk this person was to the community.

11 JUDGE SIPPEL: But that would be an  
12 estimated characterization as opposed to a say  
13 a scientifically determined?

14 THE WITNESS: Yes, Your Honor,  
15 there was no actuarial models used. There was  
16 really nothing scientific about it. It was  
17 just, what is your best guess as to this  
18 persons -

19 JUDGE SIPPEL: All right, I didn't  
20 want to use that word.

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: Okay, well thank you

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1 for your candor.

2 BY MR. KNOWLES-KELLETT:

3 Q Okay, did you have any background  
4 for performing these assessments?

5 A Are you talking about the initial  
6 committee assessments?

7 Q When you were performing them in  
8 1994 to 1995. Did you work a time on sex  
9 offenders?

10 A In 1994 I had worked for four years  
11 with sex offenders.

12 Q Okay, so that was sort of the  
13 beginning of your career with sex offenders?

14 A Yes.

15 Q Okay, the -- what changed with  
16 regard to risk assessments. Why did you move  
17 to an actuarial model?

18 A Well the problem was because law  
19 enforcement was able -- every law enforcement  
20 agency was able to do their own subjective  
21 determination of what risk somebody played in  
22 the community.

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1           You had law enforcement agencies  
2           that because somebody was a Level 3 Sex  
3           Offender, which was the highest risk, and  
4           which meant they were subject to media  
5           notification, you would have law enforcement  
6           agencies that would automatically make  
7           somebody a Level 3.

8           Knowing that because this person  
9           was a Level 3 and subject to media  
10          notification they would probably leave that  
11          jurisdiction and they would go to somewhere.  
12          Generally either Spokane or the Greater Puget  
13          Sound area between Everett and Tacoma,  
14          including Seattle where we were trying to do  
15          it within the spirit of the law.

16          And that's exactly what happened.  
17          We had sex offenders fleeing these smaller  
18          agencies and sometimes larger agencies to go  
19          to some place where they felt they were going  
20          to be treated more fairly.

21          So in 1997 realizing that law  
22          enforcement can be our own worst enemy

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1 sometimes and we were about to shoot ourselves  
2 in the foot. I drafted legislation that  
3 created the end of sentence review board.  
4 Which made -- the legislation mandated under  
5 Washington State law that we use an actuarial  
6 risk assessment model that would be used on  
7 every sex offender leaving the Department of  
8 Corrections, leaving the juvenile  
9 rehabilitation administration, leaving Western  
10 State Hospital, or leaving the jurisdiction of  
11 the indeterminate sentence review board or  
12 parole board.

13 So, if they met those four criteria  
14 they would be subject to review by the end of  
15 sentence review board using an actuarial risk  
16 assessment model that the end of sentence  
17 review board would end up determining was the  
18 one Washington State was going to use.

19 That legislation passed and in 1997  
20 the end of sentence review board was created  
21 for reviewing sex offender risk.

22 Q Okay, and so then you went back

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1 after Mercer Island, you rated Mr. Titus  
2 another time?

3 A Because Mr. Titus had never been  
4 scored using the state mandated scoring tool  
5 we had never done one on him. We had left his  
6 risk at what it was feeling that it's not fair  
7 to adjust somebodies risk if there hasn't been  
8 any activity on their part.

9 If they've done what their supposed  
10 to do. If they are not increasing risk or  
11 decreasing risk. I mean we would just leave  
12 it the same.

13 JUDGE SIPPEL: Did I get maybe  
14 I missed something. Did you testify as to  
15 what the risk assessment was on the first  
16 assessment. What level did he come out of?

17 THE WITNESS: In the subjective  
18 determination by the committee we determined  
19 that he was a moderate risk to reoffend, or a  
20 Level 2.

21 JUDGE SIPPEL: Level 2.

22 THE WITNESS: Yes.

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1 JUDGE SIPPEL: And do you recall  
2 what any of the -- what the significant  
3 determinants were to come up with a Level 2,  
4 even on the subjective level?

5 THE WITNESS: It was the fact that  
6 he had three convictions for some sort of  
7 sexual assault. In fact there was two  
8 indecent liberties as a juvenile. And  
9 communicating with a minor for immoral  
10 purposes as an adult.

11 He had two other incidents where he  
12 was charged for sex offenses and they were  
13 ultimately dismissed by the Court.

14 One under the auspices that he get  
15 sex offender treatment. That was the first  
16 one. The second one was because the victim  
17 was unable to testify.

18 So we actually had five different  
19 crimes that we were looking at as well as his  
20 sex offender treatment summary that he refused  
21 to sign, but still was not a glowing accolades  
22 about how well he did in treatment. In fact,

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1 it was just the opposite.

2 JUDGE SIPPEL: So that, that  
3 warranted a Level 2 at that time back in 1994?

4 THE WITNESS: Probably would have  
5 warranted a Level 3, but we were cognizant of  
6 the fact that this was relatively new to  
7 Washington State.

8 We were being very diligent in not  
9 overreacting because we realized that in  
10 making somebody a Level 3 that meant that they  
11 were subject to media coverage which could  
12 obviously have a huge impact on somebodies  
13 life.

14 JUDGE SIPPEL: You felt though that  
15 the committee did it's job back in '94?

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: Apparently you must  
18 have wrestled -- it sounds like you wrestled  
19 with it a lot and then you came up with a 2  
20 for th reason you've given?

21 THE WITNESS: Right.

22 JUDGE SIPPEL: Okay then, go ahead

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1 then Mr. Knowles.

2 BY MR. KNOWLES-KELLETT:

3 Q Why do you do these risk  
4 assessments?

5 A The actuarial risk assessments, or  
6 the one's in the community?

7 Q Why do you do a community  
8 notification program at all?

9 A Well, Washington State was the  
10 first state in the United States to do  
11 community notification. That began in 1990  
12 and Megan's Law didn't even go into effect  
13 until 1996.

14 So we were the first in the nation  
15 to do them and the idea was that we felt that  
16 people had a right to know when a sex offender  
17 who was a moderate or high risk was living in  
18 their community for a number of reasons.

19 Number one, so that -- not so that  
20 they could harass them in any way shape or  
21 form. You know, we do community meetings that  
22 make sure people understand in no uncertain

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1 terms that we will not tolerate in any way,  
2 shape, or form any type of vigilantism on a  
3 sex offender.

4 But it is designed to help people  
5 make good choices in relation to having this  
6 sex offender in their neighborhood. We don't  
7 -- we tell them that you don't have to roll  
8 out the red carpet.

9 You don't have to bring out the  
10 welcome wagon, but leave the person alone.  
11 Let them get on with their life. Know what  
12 they've done, know who they are, this probably  
13 isn't somebody you want babysitting your  
14 child. This probably isn't somebody, you know  
15 you want driving your child to school.

16 But leave them alone and in many  
17 cases they will succeed. And that was the  
18 purpose of community notification. It also  
19 assists us in getting our into the community  
20 and by doing this community education meetings  
21 educating the public on sex offenders and sex  
22 offending in general. So that they

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1 understand. It's a big picture. It's not  
2 just this narrow piece of picture where we get  
3 some legislatures, you know passing laws  
4 saying sex offenders can't live within a  
5 certain geographical area. That may solve the  
6 problem there but there are huge ramifications  
7 for that.

8 So we try to explain the big  
9 picture to the public and they do understand  
10 it when we do these meetings.

11 Q Does it end up -- does it effect  
12 their ability to access children?

13 A Well if their crimes have been --

14 JUDGE SIPPET: Do you understand  
15 that question. Access, what do you mean  
16 access children?

17 MR. KNOWLES-KELLETT: The documents  
18 discuss -- the release documents discuss  
19 limiting Mr. Titus' access to minors. Do you  
20 understand what I mean by access to minors?

21 THE WITNESS: Yes.

22 MR. KNOWLES-KELLETT: Okay.

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1 BY MR. KNOWLES-KELLETT:

2 Q Does community notification have  
3 the effect of limiting access to minors. For  
4 -- you know to prevent recidivism?

5 A Well there was a study done by the  
6 Washington State Institute for Public Policy  
7 that took a look at recidivism based on  
8 community notification and it's the only one  
9 that has been done in the United States to  
10 date.

11 And what that said was that it was  
12 statistically insignificant the impact the  
13 community notification had on recidivism.  
14 But where it did make a difference in almost  
15 double was people reporting that there had  
16 been a violation of some sort in double the  
17 time that there was.

18 For example, I think it was 24  
19 months that someone had been under community  
20 notification. But yet if they had reoffended  
21 that was determined within 12 months. It was  
22 in half the time that --

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1 JUDGE SIPPEL: You cut down on the  
2 detection time is that what you're saying?

3 THE WITNESS: If the person  
4 committed a violation they were detected in  
5 less time. It took less time to detect it  
6 because they were subject to community  
7 notification -- JUDGE SIPPEL: I see, I  
8 see.

9 THE WITNESS: - than those that  
10 were subject to community notification that  
11 hadn't reoffended.

12 JUDGE SIPPEL: Okay, okay, I  
13 understand.

14 THE WITNESS: I probably didn't --

15 JUDGE SIPPEL: No you did, you did.

16 BY MR. KNOWLES-KELLETT:

17 Q You said that one of the purposes  
18 was the communities right to know so that they  
19 could make good choices. What do you mean by  
20 good choices?

21 A Well, for example if someone is a  
22 convicted child molester you obviously don't

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1 want them watching their children. In  
2 addition, I mean Washington State felt so  
3 strongly about that they passed the law that  
4 makes it a misdemeanor for anybody to leave a  
5 child in the care of a sex offender.

6 You know if somebody is, for  
7 example a convicted child molester and they go  
8 to Church they don't want them running the  
9 youth group. So those are the types of  
10 choices that I'm talking about. That allows  
11 them to make good, educated choices regarding  
12 the safety of their children.

13 Q One other matter that came up since  
14 you wrote your testimony. My understanding is  
15 - are you familiar with a national system of  
16 registration for sex offenders?

17 A There was a Federal law that was  
18 passed in 2006 called the Adam Walsh Act. And  
19 states have until July of 2009 to come into  
20 compliance or they lose ten percent of their  
21 burn grant formula funds per year  
22 accumulatively until all the funds are gone.

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1                   And the Adam Walsh Act is  
2 a sweeping bill that makes sex offender  
3 registration and community notification the  
4 same in all 50 states and each of our  
5 territories, Guam, Puerto Rico, Virgin  
6 Islands, American soil.

7           Q     Do you know if Washington will  
8 adopt it?

9                   MR. LYON: Objection.

10                  JUDGE SIPPEL: What's the reason?

11                  MR. LYON: Calls for speculation.

12                  JUDGE SIPPEL: Well I see -- well  
13 you can rephrase that.

14                  BY MR. KNOWLES-KELIETT:

15           Q     Do you acknowledge as to whether  
16 Washington plans to adopt it or not?

17           A     I have heard from a number of  
18 people that they do. But I have also heard  
19 from people including myself that we're going  
20 to fight it as much as we can.

21           Q     Can you describe the major changes  
22 from your current system?

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1 JUDGE SIPPET: I'm going to take  
2 that answer as being that he really, you  
3 really don't know.

4 THE WITNESS: I really don't know.

5 MR. KNOWLES-KELLETT: [ ]  
6 stipulate to that.

7 JUDGE SIPPET: It's okay, go ahead.

8 BY MR. KNOWLES-KELLETT:

9 Q Could you describe the major  
10 changes that it would have from the current  
11 system?

12 MR. LYON: Objection as to  
13 relevance, Your Honor as well as being  
14 speculative.

15 MR. KNOWLES-KELLETT: Can I  
16 respond, Your Honor?

17 JUDGE SIPPET: Yes go ahead, sure.

18 MR. KNOWLES-KELLETT: Okay, I think  
19 that Federal standard with respect to sex  
20 offenders could be -- could help Your Honor,  
21 in making a determination in this case.

22 I don't know that that's the case.

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1 By having my limited understanding I'd like to  
2 hear Detective Shilling's understanding.

3 JUDGE SIPPEL: Adam Walsh this is  
4 Federal legislation?

5 MR. KNOWLES-KELLETT: Federal  
6 legislation. And you know I think that this  
7 case could be precedent setting for the FCC  
8 and we at least ought to -- you know if you  
9 just give it -- I don't intend to go into this  
10 very long. A few minutes and if's not helpful  
11 to you so be it.

12 MR. LYON: Your Honor, I don't  
13 think anything stops counsel from referring to  
14 the Federal law in findings. I don't know  
15 what -- how we move this along in having this  
16 witness assess his understanding of it.

17 JUDGE SIPPEL: Well I am inclined  
18 to agree with counsel. In light of the time  
19 of the day and you know we didn't really make  
20 as much ground today as we should have I don't  
21 think.

22 I'm not punishing you for this.

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1 But I -- it's too speculative. The detective  
2 candidly answered. He said that, you know he  
3 has one set of views on it and he feels very  
4 strongly about it. And he's going to work  
5 against it and there's probably other people  
6 who are also well qualified people who feel  
7 the other way. So, what difference does it --

8 MR. KNOWLES-KELLETT: Well as to  
9 Washington State that's correct. As to the  
10 DHS's guidelines regarding a national system,  
11 their final, it's not speculative.

12 JUDGE SIPPEL: Well you can put  
13 those -- do you have the guidelines we'll put  
14 them in the record. We'll take judicial  
15 notice of them?

16 MR. KNOWLES-KELLETT: Okay, what  
17 I'd like to do though is ask just a couple of  
18 questions about the major differences so that  
19 can articulate --

20 JUDGE SIPPEL: All right.

21 MR. KNOWLES-KELLETT: -- it makes  
22 it much easier to read the guidelines.

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1 JUDGE SIPPEL: All right, a couple  
2 of questions.

3 BY MR. KNOWLES-KELLETT:

4 Q Detective Shilling, could you  
5 highlight the major differences particularly  
6 with respect to Mr. Titus if you adopt the  
7 national Adam Walsh system?

8 A Well for one of the major changes  
9 and when I was talking about my own being  
10 against this, Washington State ratifying this  
11 is because we go from a system where we take  
12 a look at risk and risk will mean nothing  
13 under the Adam Walsh Act. It is solely based  
14 on crime of conviction or crimes of  
15 conviction.

16 So for example, somebody who has  
17 Mr. Titus' convictions is automatically going  
18 to be a Tier 3 regardless of any of actuarial  
19 risk assessment. Not that actuarial risk  
20 assessment can't be done because it says in  
21 the Federal guidelines they can't. But they  
22 have no determination what the tier level is

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